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In the High Court of Punjab & Haryana at Chandigarh.

Date of Decision : 17.11.2006.

Diwan Singh ... Petitioner

vs

The Labour Court,Bhatinda, and another .... Respondents

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Ms.Anu Tiwari,Advocate for
Mr.Sarjit Singh,Senior Advocate,for the petitioner.
Mr.D.S.Patwalia,Advocate,for respondent no.2.

Kiran Anand Lall,J.

The petitioner joined the service of respondent no.2, as a driver, in November, 1984, and continued as such, till 15.7.1991, on which date his services were terminated on the basis of a domestic enquiry held against him. He, thereupon, raised an industrial dispute, in this regard and prayed that his termination be set aside and he be reinstated, with continuity of service and back wages. The dispute was referred for adjudication to the Labour Court, Bhatinda. The case set up by respondent no.2, before the Labour Court, was that the termination order was passed after the petitioner was found guilty of having not complied with the order of transfer and also due to his wilful absence from duty. The petitioner, on the other hand, pleaded that he was president of the Union, and in that capacity, he had gone to see the Managing Director, in connection with some problem of a co-employee. But, instead of solving the problem, the Managing Director ordered his (of petitioner) transfer, whereupon the executive members of the union met the Managing Director and, after discussion, it was settled that

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the petitioner would proceed on leave and his transfer orders would be withdrawn by the Managing Director. The petitioner, accordingly, proceeded on leave from 21.3.1991 to 25.3.1991, after applying for the same on 20.3.1991. But, on 25.3.1991, he received a letter from respondent no.2 that his leave had been rejected. Thereafter, he was charge-sheeted and a regular enquiry was held against him. And, on receipt of the enquiry report, his services were terminated.

The Labour Court held the termination of services of the petitioner as legal and justified, and consequently, answered the reference against him, vide award dated 10.1.1994, Annexure P3.

The petitioner filed this petition, seeking a writ for quashing the award of Labour Court (Annexure P3), on the ground that the finding of Labour Court about his having remained absent from duty, is against the evidence on record and the enquiry held was also a total farce, and that respondent no.2 had not honoured a settlement arrived at between the parties, as per which the petitioner was to be allowed to join duty, and he, in turn, was to withdraw all his cases filed against respondent no.2.

I have, however, not found any merit in the petition. The admitted case of the petitioner is that he was not on duty from 21.3.1991 to 25.3.1991. He, as per his case, had proceeded on leave with effect from 21.3.1991 on-wards, after filing an application for the purpose, on an assurance given by the Managing Director that leave would be sanctioned. But, in the absence of there being any evidence in this regard, this version was rightly disbelieved by the Labour Court. It is petitioner's own case that he had been transferred to Badal vide order dated 19.3.1991. The Labour Court recorded a firm finding, on the basis of evidence appearing on record,

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that he did not join duty at Badal, in compliance with the transfer orders, and instead, remained absent from duty with effect from 21.3.1991 to 25.3.1991. He was served with a show cause notice but no reply thereto was submitted by him. Thereafter, he was served with a charge-sheet, to which he did file reply but that was not found satisfactory. In the domestic enquiry, held by Shri Suraj Parkash Gupta, into the charges of absence from duty and non-compliance of transfer orders, he was found guilty, followed by termination of his services.

Learned counsel for the petitioner contended that the verdict of Labour Court, affirming the finding of the domestic enquiry regarding absence of the petitioner from duty and his failure to comply with transfer orders, is against the evidence on record. According to him, the petitioner was, infact, not allowed to enter the office, under the instructions of the Managing Director. A subsequent settlement arrived at between the parties, was also not honoured by the management which did not permit him to join duty. The request of the petitioner for change of the enquiry officer, as a fair enquiry was not expected from him on account of his being a subordinate to respondent no.2, was also not acceded to by the management.

None of the above contentions has any merit. The settled legal position is that once a domestic tribunal comes to a particular conclusion on the basis of evidence on record, normally it is not open to the appellate tribunal and to court, to substitute their subjective opinion in the place of one arrived at by the domestic tribunal. Reference in this regard may, with advantage, be made to JT 2004 (8) SC 103 *Divisional Controller, KSRTC (NWKRTC) vs. A.T.Mane*. In the instant case, the domestic tribunal had clearly found the petitioner guilty of both the charges against him, on the

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basis of evidence led during the enquiry, and the Labour Court found that the enquiry held was fair and proper. During arguments, learned counsel for the petitioner could not point out anything, which may call for any interference in the matter, at the hands of this court.

It may also be mentioned that, as held in AIR 1989 SC 1433 *Gujarat Electricity Board and another vs. Atmaram Sungomal Poshani*, if a public servant is transferred and he fails to proceed on transfer in compliance to the transfer order, he would, in the absence of stay of the transfer order, expose himself to disciplinary action under the relevant rules. Since in the case in hand also, the petitioner had not complied with the transfer order, he was rightly found guilty of the charge framed against him, in this regard.

In so far as the Settlement, Annexure P1, relied upon by the petitioner is concerned, no reference thereto appears to have been made before the Labour Court. In any case, as it appears from para 8 (iii) of the petition, the petitioner himself had also not honoured the settlement as he withdrew only two cases filed (by him) against the Managing Director but not the third case. That being so, he had no right to ask the management to reinstate him in pursuance of the settlement.

In view of the above, the petition deserves to be dismissed, and it is so ordered.

17.11.2006. (Kiran Anand Lall)
vs. Judge.